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ASSESSING THE INEFFICIENCY OF DEBT RECOVERY TRIBUNALS

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I. ABSTRACT

Debt recovery is a crucial aspect of financial systems worldwide, ensuring the smooth functioning of economies by mitigating risks associated with unpaid debts. In the Indian context, Debt Recovery Tribunals (DRTs) were established with the aim of expediting the recovery of debts by banks and financial institutions. However, despite their inception, DRTs have faced criticism for their inefficiency in resolving disputes and recovering debts promptly. This paper aims to analyze the factors contributing to the inefficiency of DRTs in India through a comparative analysis with global practices. Additionally, it explores potential reforms to enhance the effectiveness of DRTs and improve debt recovery mechanisms in India.

II. Keywords

Debt Recovery Tribunal, inefficiency, RDDBFI Act, Indian financial system, legal challenges, reforms

III. INTRODUCTION

Debt recovery is a pivotal component of any robust financial system because it ensures the smooth functioning of the economy. The establishment of Debt Recovery Tribunals (DRTs) was a strategic move aimed at facilitating speedy and effective recovery of loans granted by banks and financial institutions from borrowers who default on their repayments, thereby bolstering the health of the financial sector. However, the efficacy of these tribunals has come under scrutiny due to persistent inadequacies in debt recovery processes and timelines.

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Despite the initial intentions behind their creation, DRTs have encountered numerous challenges that have hindered their ability to effectively resolve disputes and facilitate prompt debt recovery. As a result, the intended benefits of DRTs have not been fully realized, raising concerns about their overall effectiveness in addressing the burgeoning issue of debt recovery. This paper endeavors to delve into the various factors contributing to the inefficiency of DRTs in India. Through a comprehensive analysis, it aims to identify the root causes of these inefficiencies and explore potential avenues for reform. Specifically, the research will address the following questions:

1. What are the main operational challenges faced by DRTs in their current framework?
2. How do these challenges impact the overall timeline and success rate of debt recovery?
3. What reforms can be implemented to enhance the effectiveness of DRTs?

The resolution of these issues is not only critical for improving the operational effectiveness of DRTs but also for maintaining the financial health of the banking sector and securing the economic stability of the nation. Delays and inefficiencies in debt recovery can lead to increased credit risk and a diminished trust in the financial system, which in turn could deter investment and stifle economic growth. By examining these broader implications and identifying stakeholders ranging from financial institutions to small borrowers, this study aims to offer a holistic view of the challenges and solutions within India's debt recovery landscape. By shedding light on the shortcomings of the current system and proposing pragmatic solutions, this study seeks to contribute to the ongoing discourse on enhancing debt recovery mechanisms in India's financial landscape.

IV. OVERVIEW OF DEBT RECOVERY TRIBUNALS

Debt recovery tribunals in India are established under the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI) of 1993. These tribunals play a crucial role in adjudicating cases related to the recovery of debts by Banks and Financial Institutions and ensuring the timely resolution of debt disputes.

In 1995, the Delhi High Court declared the RDDBFI unconstitutional, citing concerns about its infringement upon judicial independence.[3] However, the Supreme Court permitted the operation of Debt Recovery Tribunals (DRTs) with the condition that amendments be made to the existing RDDBFI Act. Consequently, the government introduced amendments to the RDDBFI Act in 2000 and 2002, which were subsequently deemed constitutional by the Supreme Court. As a result, DRTs now operate within a constitutional framework.[4] DRTs were introduced to address the timely recovery of debts by financial institutions. Before their establishment, banks used to file recovery suits in civil courts, which were overwhelmed with numerous cases, leading to delays in debt recovery and substantial losses for banks and financial institutions. The establishment of DRTs was recommended by the T Tiwari Committee, endorsed later by the Narasimham Committee.

DRTs are authorized to hear cases where defaults have exceeded a certain threshold, which was doubled in 2018 by the government, raising it from 10 lakhs to 20 lakhs[5]. The jurisdiction of civil courts in matters related to the recovery of debts exceeding Rs. 20 lakhs is completely barred, except for the Supreme Court or High Courts exercising jurisdiction under Articles 226 and 227 of the Constitution of India. There are currently 39 DRTs and 5 Debts Recovery Appellate Tribunals (DRATs) across India with jurisdiction over debt recovery matters. DRTs are vested with extensive powers, including the attachment and sale of properties and the auctioning of assets etc. The jurisdiction, power, and authority of DRTs are outlined in Section 17 of the RDB Act. According to this section, DRTs entertain and decide applications only from banks and financial institutions (FIs) for the recovery of debts due to them.

"A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions."

[3] Delhi High Court Bar Association v. Union of India, AIR 1995 Delhi 323
[4] Union of India v. Delhi High Court Bar Assn., (2002) 4 SCC 275
[5] Ministry of Finance (Department of Financial Services), Notification, S.O. 4312(E) (New Delhi, September 6, 2018)

DRTs and DRATs are not bound by the Code of Civil Procedure, 1908 (CPC), enabling them to expedite the adjudication process through summary adjudication. Additionally, these tribunals handle matters filed under the SARFAESI Act, 2002, which allows secured creditors to enforce debt security without the intervention of regular courts once the borrower fails to repay the loan or the loan account is declared as an NPA.

The structure of DRTs is outlined in Section 4 of the Recovery of Debts and Bankruptcy Act, 1993. Each tribunal is led by a Presiding Officer, typically a District and Sessions Judge, who holds the sole power to hear and render judicial orders. The Presiding Officer is supported by a team of officers with diverse ranks, who are not necessarily mandated to have legal expertise. However, despite these efforts, DRTs continue to face numerous challenges, unable to fulfil the functions for which it was intended to introduced.

V. INEFFECIENCIES IN DEBT RECOVERY TRIBUNALS

The Ineffectiveness of Debt Recovery Tribunals (DRTs) stems from numerous challenges spanning various dimensions, from infrastructural deficiencies to procedural complexities, and is companied by broader systemic issues.

- **Less number of DRAT**

While there are 33 of DRTs, there are only five of DRATs each covering multiple DRTs of a particular geographical zone. As a result, all the five DRATs are overburdened and not able to fulfil the objective of fast recovery of dues for which they were set up. There is certainly a need for more number of DRTs.[6]

- **Infrastructural and Resource Limitations**

A fundamental issue hampering the operational efficiency of DRTs is the lack of adequate infrastructure.[7] Many DRTs operate out of makeshift facilities lacking basic

[6] Standard, B. "Debt Recovery Tribunals: More Pain than Gains for Banks," *Business Standard* (2014), available at https://www.business-standard.com/article/finance/debt-recovery-tribunals-more-pains-than-gains-for-banks-114121600139_1.html (accessed April 17, 2024).
[7] The Economic Times, Debt Recovery Tribunals Bogged Down by Inadequate Infrastructure and Red Tape," *The Economic Times* (no date), available at https://economictimes.indiatimes.com/news/economy/infrastructure/debt-recovery-tribunals-

amenities, affecting functionality and diminishing their stature as judicial bodies. The absence of well-equipped courtrooms, waiting areas, and proper office spaces for staff leads to congestion and disorganization, unsuitable for judicial proceedings. This physical inadequacy is mirrored in the scarcity of essential resources, including manpower.

- **Procedural Delays and Backlogs**

Procedural delays, though not unique to DRTs, are particularly detrimental to their mandate of swift debt recovery[8]. Despite being established to circumvent protracted processes of traditional courts; DRTs have not entirely escaped this judicial quagmire. The accumulation of cases, partly due to the burgeoning credit market and increasing instances of defaults, has led to significant backlogs. Procedural intricacies, including filing, hearing, and adjudication processes, though designed to be streamlined, often become mired in delays. Frequent adjournments, lengthy documentation requirements, and slow-paced hearings contribute to the sluggish disposal of cases, diluting the essence of DRTs as fast-track debt recovery mechanisms.

- **Jurisdictional Conflicts and Legal Ambiguities**

The legal landscape within which DRTs operate is marked by jurisdictional overlaps and ambiguities. The advent of the Insolvency and Bankruptcy Code (IBC) in 2016 introduced a parallel regime for resolution of insolvency and bankruptcy matters, potentially leading to jurisdictional tussles between DRTs and the National Company Law Tribunal (NCLT). [9]Such overlaps create confusion and jurisdictional turf wars, complicating legal proceedings and delaying case resolution. Moreover, the intersection of the SARFAESI Act and other legal provisions with the mandate of

bogged-down-by-inadequate-infrastructure-and-red-tape/articleshow/36316928.cms?from=mdr (accessed April 17, 2024)

[8] Roy, S. and Regy, P., "Understanding Judicial Delays in Debt Tribunals," SSRN Electronic Journal [Preprint], doi:10.2139/ssrn.2996409 (2017)

[9] Ganguly, S., "The Ambiguity on Jurisdiction of NCLT and DRT Under IBC - Insolvency/Bankruptcy - India," *The Ambiguity On Jurisdiction Of NCLT And DRT Under IBC - Insolvency/Bankruptcy - India* (2021), available at https://www.mondaq.com/india/insolvencybankruptcy/1144054/the-ambiguity-on-jurisdiction-of-nclt-and-drt-under-ibc (accessed April 17, 2024).

DRTs adds complexity, often resulting in legal challenges testing DRTs' jurisdiction and authority.

- **Bar of Jurisdiction**

Despite the availability of statutory remedies under the RDB Act and the SARFAESI Act, the High Courts continue to exercise their jurisdiction under Article 226 [10]of the Constitution of India for passing orders which have serious adverse impact on the rights of banks and other financial institutions to recover their dues.

- **Enforcement of Orders**

A judicial body's effectiveness hinges significantly on its ability to enforce orders. DRTs face considerable challenges in this regard. The process of executing recovery orders, including attachment and sale of assets, is fraught with hurdles. Debtors often deploy dilatory tactics through protracted legal battles to stall enforcement. The lack of a streamlined and robust mechanism for executing DRT orders severely impacts timeliness and efficacy of debt recovery, undermining the purpose for which these tribunals were established.

- **Technological Underpinnings**

In an age where technology is revolutionizing judicial processes globally, DRTs conspicuously lag in adopting technological advancements. The absence of comprehensive digital infrastructure for case management, e-filing, and virtual hearings impedes efficiency. This technological deficit not only affects case disposal speed but also restricts access to justice, especially in a geographically vast and diverse country like India. The COVID-19 pandemic underscored the urgent need for digital transformation in DRTs, highlighting vulnerabilities of a system reliant on physical presence and paper-based processes. Recently, the Supreme Court affirmed mandatory

[10] taxguru_in and Capoonam, "Exercising Power under Article 226 Unjustified as Remedy Available Before Debt Recovery Tribunal," *TaxGuru* (2023), available at https://taxguru.in/corporate-law/exercising-power-article-226-unjustified-remedy-debt-recovery-tribunal.html (accessed April 17, 2024).

e-filing in Debts Recovery Tribunals (DRTs) and Debts Recovery Appellate Tribunals (DRATs).[11]

- **Appointment of Recovery Officers**

The independence, fairness, and impartiality of many serving Recovery Officers are often questionable due to their lack of a judicial background or their appointment on a deputation basis from the same banks or financial institutions that are filing recovery cases in Debt Recovery Tribunals (DRTs).[12]

VI. RELEVANT CASE LAWS

In the case of ***Indian Bank v. ABS Marine Product***[13], Indian Bank sought the transfer of a suit filed by ABS Marine in the Calcutta High Court to the Debt Recovery Tribunal (DRT). The Supreme Court ruled that an independent suit initiated by a borrower could not be transferred to the DRT without the borrower's consent, as their right to seek relief from a civil court cannot be curtailed. This decision resulted in a paradox where the borrower simultaneously pursued litigation in a civil court seeking relief contrary to the Bank's claims in the DRT.

In the case of ***Standard Chartered Bank vs. Dharminder Bholi***[14], the Supreme Court criticized a Debt Recovery Appellate Tribunal (DRAT) for unnecessarily prolonging a matter, leading to a delay of almost four and a half years in resolving an appeal. Despite the issue at hand being relatively straightforward – determining which of the two Debt Recovery Tribunals (DRTs) had jurisdiction over the dispute – the tribunal showed indifference towards its statutory obligations outlined in the Recovery of Debts Due to Banks and Financial Institutions Act (RDB Act) and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act

[11] Sharma, P., "Supreme Court Affirms Mandatory E-filing in DRTs & Drats, Says Other Courts Should Replicate It," *Live Law* (2023), available at https://www.livelaw.in/top-stories/supreme-court-affirms-mandatory-e-filing-in-drts-drats-says-other-courts-should-replicate-it-225128 (accessed April 17, 2024)
[12] TNN, "Appointment of Bank Officials to DRT Posts Raises Eyebrows," *Visakhapatnam News - Times of India*, The Times of India, Sep 1, 2015 (no date), available at https://timesofindia.indiatimes.com/city/visakhapatnam/appointment-of-bank-officials-to-drt-posts-raises-eyebrows/articleshow/48753056.cms (accessed April 17, 2024)..
[13] Indian Bank v. ABS Marine Products (P) Ltd., (2003) 3 ICC 208 (Cal) (DB)
[14] Standard Chartered Bank vs. Dharminder Bholi., 2013 (15) SCC 341, (2014)

(SARFAESI). This prompted the Supreme Court to direct the Presiding Officer of the DRAT to take corrective measures to address the procrastinated delineation by the Tribunals.

In ***Centre for Public Interest Litigation v. Housing & Urban Development Corporation Ltd***[15]., the Court has directed the Union of India to submit an affidavit addressing several key issues. These include whether the timelines outlined in the amended legislation can be met with the current infrastructure, including the staffing of Debt Recovery Tribunals and Debt Recovery Appellate Tribunals. The affidavit should also clarify the rationale behind the revised timelines and whether any scientific study has been conducted on infrastructure availability. Additionally, the Union government is expected to outline steps to improve infrastructure for these tribunals, including physical facilities and personnel, and provide a specific plan with timelines for upgrading existing infrastructure. Furthermore, the affidavit should include empirical data on cases pending for more than ten years and a list of corporate entities with outstanding amounts exceeding Rs. 500 crore.

VII. RECENT DEVELOPMENTS

As the wheels of justice continue to grind slowly at Debt Recovery Tribunals (DRTs), concerns over inefficiency have prompted significant calls for reform. The Finance Ministry's latest move to establish a panel aimed at streamlining the debt recovery process underscores the growing frustration among stakeholders.

One key proposal on the table is the amendment of the SARFAESI and DRT Acts [16]to grant legal validity to e-notices, a measure that could potentially expedite the process and bring it in line with modern technological standards. Led by an Additional Secretary, the committee tasked with recommending these amendments has been engaged in intensive discussions, signaling a serious intent to address the

[15] Centre for Public Interest Litigation v. Housing & Urban Development Corporation Ltd., 2017 SCC OnLine SC 13

[16] The Economic Times," "Govt Contemplating Changes in SARFAESI, DRT Laws; to Provide Legal Sanctity to E-Notices," The Economic Times (no date), available at https://economictimes.indiatimes.com/news/economy/finance/govt-contemplating-changes-in-sarfaesi-drt-laws-to-provide-legal-sanctity-to-e-notices/articleshow/108617771.cms?from=mdr (accessed April 17, 2024).

longstanding inefficiencies plaguing the system. Furthermore, the performance of empaneled advocates at DRTs has come under scrutiny, with banks now set to conduct regular reviews to assess their effectiveness[17]. This move towards performance-based allocation of cases reflects a broader push towards accountability and efficiency within the debt recovery framework.

Despite these efforts, the road to reform remains fraught with challenges. The entrenched culture of delay and procedural hurdles continue to impede swift resolution of cases, leaving creditors and debtors alike in a state of limbo. The need for a comprehensive overhaul of the DRT mechanism has never been more apparent, with stakeholders increasingly vocal in their demands for concrete action. While these initiatives represent positive steps towards reform, the challenges ahead should not be underestimated. The entrenched culture of delay and procedural hurdles remains a formidable obstacle to expeditious case resolution. However, by addressing these issues head-on and embracing innovative solutions, stakeholders can work towards a more responsive and equitable debt recovery system.

VIII. REFORMS AND SUGGESTIONS

1. DRTs must be provided with well-equipped facilities to conduct proceedings efficiently. Additionally, recruiting qualified judicial and administrative personnel to manage caseloads effectively is essential to mitigate delays and backlogs.
2. Simplifying procedural requirements and expediting processes such as filing, hearing, and adjudication can significantly enhance the efficiency of DRTs. Measures should be taken to minimize adjournments and streamline documentation, ensuring a swift resolution of cases.
3. Resolving jurisdictional overlaps and ambiguities between DRTs, the National Company Law Tribunal (NCLT) is imperative. Clear guidelines

[17] Standard, B., "Banks to Conduct Performance Review of Advocates to Fast-track DRT Cases," *Business Standard* (2024), available at https://www.business-standard.com/companies/news/banks-to-conduct-performance-review-of-advocates-to-fast-track-drts-cases-124021700626_1.html (accessed April 17, 2024)

and protocols should be established to delineate jurisdictional boundaries, minimizing confusion and expediting case resolution.

4. Strengthening enforcement mechanisms to ensure compliance with DRT orders is crucial. Measures should be implemented to expedite the execution of recovery orders, including attachment and sale of assets, to deter debtors from employing dilatory tactics.
5. Embracing technological advancements is essential to modernize DRTs and improve efficiency. Investing in digital infrastructure for case management, e-filing, and virtual hearings can streamline processes, enhance accessibility, and mitigate disruptions, as evidenced by the recent mandate for mandatory e-filing.
6. Ensuring the independence, fairness, and impartiality of Recovery Officers is vital. Measures should be taken to prevent conflicts of interest and ensure that appointments are based on merit and judicial competence rather than affiliations with banks or financial institutions.
7. Addressing legal ambiguities surrounding the jurisdiction and authority of DRTs is essential. Amendments to relevant laws, such as the SARFAESI and DRT Acts, should be considered to clarify legal provisions and streamline processes.
8. Implementing regular performance reviews for empanelled advocates at DRTs can promote accountability and efficiency within the system. Banks should assess the effectiveness of advocates to ensure optimal representation and case management.

By implementing these reforms and suggestions, policymakers can address the inefficiencies plaguing DRTs and enhance the effectiveness of debt recovery mechanisms in India's financial landscape.

IX. CONCLUSION

In conclusion, the inefficiency of Debt Recovery Tribunals (DRTs) in India poses significant challenges to the smooth functioning of the financial system and the timely

recovery of debts. Despite their establishment with the aim of expediting debt recovery processes, DRTs have encountered numerous obstacles, ranging from infrastructural deficiencies to procedural complexities and legal ambiguities.

This paper has explored the various factors contributing to the inefficiency of DRTs, including the lack of adequate infrastructure and resources, procedural delays and backlogs, jurisdictional conflicts, enforcement challenges, technological shortcomings, and concerns regarding judicial independence and impartiality. Through case studies and analysis of recent developments, it has become evident that the current system requires comprehensive reforms to address these issues effectively. The suggested reforms encompass expanding infrastructure and resources, streamlining procedures, clarifying jurisdictional conflicts, enhancing enforcement mechanisms, integrating technology, ensuring judicial independence, addressing legal ambiguities, conducting regular performance reviews, promoting public awareness and education, and establishing mechanisms for continuous monitoring and evaluation.

By implementing these reforms, policymakers can enhance the efficiency and effectiveness of DRTs, facilitating smoother debt recovery processes and bolstering the health of India's financial system. It is imperative that stakeholders collaborate to enact meaningful changes and address the longstanding inefficiencies that have hindered the functioning of DRTs. Only through concerted efforts can India's debt recovery mechanisms be optimized to meet the evolving needs of the economy and ensure the swift resolution of debt disputes. The successful realization of these reforms could serve as a catalyst for substantial improvements across the entire financial landscape, ultimately fostering a more resilient and robust economic environment.